

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re SH.E. et al., Persons
Coming Under the Juvenile
Court Law.

B292653
(Los Angeles County
Super. Ct. No. CK93922)

LOS ANGELES COUNTY
DEPARTMENT OF
CHILDREN AND FAMILY
SERVICES,

Plaintiff and Respondent,

v.

SHERI B.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of
Los Angeles County, Natalie P. Stone, Judge. Affirmed.

Joseph T. Tavano, under appointment by the
Court of Appeal, for Defendant and Appellant.

Mary C. Wickham, County Counsel, Kristine P. Miles,
Assistant County Counsel, and Aileen Wong, Deputy County
Counsel, for Plaintiff and Respondent.

In this dependency appeal, mother challenges the juvenile court's order terminating her parental rights over Sh.E. and Sa.E. (sometimes referred to as the children). Mother argues that the juvenile court should have applied the beneficial parent-child relationship exception pursuant to Welfare and Institutions Code section 366.26, subdivision (c)(1)(B)(i).

In the juvenile court, mother did not show that her relationship with the children promoted their well-being “ ‘ ‘ ‘to such a degree as to outweigh the well-being the child[ren] would gain in a permanent home with new, adoptive parents.’ ” ’ ”
(*In re Breanna S.* (2017) 8 Cal.App.5th 636, 646 (*Breanna S.*)).
Therefore, the juvenile court acted well within its discretion in terminating mother's parental rights. (See *id.* at p. 647 [applying abuse of discretion standard of review].) We affirm the order.

BACKGROUND

1. Case History

This appeal concerns only Sh.E. (born in 2009) and Sa.E. (born in 2011). Mother's older daughter, who lived with maternal grandparents, was not named in the petition. During the course of the dependency proceedings, mother had another child, S.C.,

who was the subject of a different Welfare and Institutions Code¹ section 300 petition.²

On June 13, 2012, the Department of Children and Family Services (DCFS) filed a section 300 petition. As later sustained, the petition alleged that mother and father engaged in physical and verbal altercations in the children's presence, including striking each other. The juvenile court detained the children the same day.

The juvenile court terminated mother's reunification services in December 2013. The court's minute order stated: "The court finds that the mother has not consistently and regularly contacted and visited with the child(ren), that she has not made significant progress in resolving the problems that led to the child(ren)'s removal from the home, and that she has not demonstrated the capacity and ability both to complete the objectives of her treatment plan and to provide for the child(ren)'s safety, protection, physical and emotional well-being, and special needs." (Capitalization omitted.)

The juvenile court terminated jurisdiction in July 2014 with legal guardianship as the children's permanent plan. Maternal grandparents became the children's legal guardians.

In June 2016, the juvenile court granted mother's section 388 petition and permitted her an additional six months of reunification services. Prior to the section 366.26 hearing at

¹ All statutory citations are to the Welfare and Institutions Code.

² Father's reunification services were terminated in March 2013. He did not seek to reunify with Sh.E. and Sa.E. and is not a party on appeal. Father is not S.C.'s father.

which the juvenile court terminated mother's parental rights, maternal grandparents, who had cared for Sh.E. and Sa.E. for almost six years, requested to adopt the children. At the time of the section 366.26 hearing, the children had lived with maternal grandparents consistently since August 31, 2012.

2. Maternal Grandparents Provided a Stable, Loving Home for the Children

DCFS reported that the maternal grandparents took good care of the children. In July 2014, the children appeared stable and happy in their grandparents' home.

In November 2016, Sa.E.'s teacher told a social worker that Sa.E. cried when she believed that she would have to leave her grandmother's home. The teacher reported that grandmother created a good learning environment for the children. In December 2016, Sa.E. reported that "everything was good at home."

In December 2016, DCFS reported that "the current caregivers are meeting the children's needs and have been doing so for the past 4 years." According to the social worker, it "would be detrimental to the children to uproot them and place them in an unstable environment with mother." DCFS described maternal grandmother as providing "open arms and the children know they can speak with her and ask for her help." The social worker observed that maternal grandparents "want what is best for the children."

In June 2017, DCFS reported that Sh.E. and Sa.E. were thriving in the care of their grandparents. DCFS reported that the children continue to "excel and grow in the home [of maternal grandparents] where they feel safe and stable." Maternal

grandmother provided Sh.E. the help she needed “to excel.” Sa.E. loved her maternal grandparents and felt that they loved her.

In January 2018, DCFS reported that maternal grandmother has “embedded herself in the lives of her granddaughters, socially, educationally, and physically. MGM [maternal grandmother] has been a sole source of constant love and support to Sh.E. and Sa.E. MGM and the children work well together.” Maternal grandfather loves his granddaughters and wants what is best for them. “The children are very comfortable in their home with their Legal Guardian’s [sic]. The Legal Guardians have created a loving, safe and stable home for the children for the past four years. The children are doing well in school with the help and guidance of the Legal Guardian’s [sic] who take special focus on education. The Legal Guardians have had timely medical and dental appointments for the children keeping them on track for any necessary treatments.”

3. Mother Fails to Reunify with Sh.E. and Sa.E.

Although the petition was based on domestic violence, during the reunification period, it became apparent that mother abused controlled substances. In July 2012, mother tested positive for alcohol. On January 4, 2013, mother tested positive for amphetamine and methamphetamine. In January 2013, mother’s roommate reported that mother used marijuana, crystal methamphetamine, and alcohol. In February 2013, mother was evicted from her apartment because she stopped paying rent.

In February 2013, mother was expelled from the homeless shelter where she had been living. According to the staff at the homeless shelter, mother did not follow the rules. In March 2013, after mother reported that she had no reason to live,

mother was placed on a voluntary hold pursuant to section 5150. The hospital released mother a week later.

In April 2013, mother was terminated from her employment where she had worked for 17 years.

In July 2013, DCFS reported that mother's counselor terminated therapy because of mother's increase in "self destructive behavior." Mother's counselor reported that mother was incapable of caring for her children because of her " ' altered sense of reality.' " Mother's counselor concluded that mother " ' lacks the ability to cognitively understand cause and effect, which results in self destructive behavior.' " The counselor believed that mother would "always have trouble following rules and determining right versus wrong." Mother was evicted from four sober living facilities.

In April 2016, mother admitted previous use of alcohol, opiates, and methamphetamine. Mother also used medications prescribed to other people. Mother stated that she had not used any controlled substance for two years. Mother reported that she had been diagnosed with depression, anxiety, and a sleep disorder. In July through November 2016, mother missed four scheduled drug tests.

In December 2016, DCFS reported that mother has not made consistent progress with mental health issues. According to the social worker, "Mother appears to be overwhelmed caring for her 8-month old child [S.C.] and trying to manage her life in general."

In March 2017, DCFS reported that a psychiatrist diagnosed mother with bipolar disorder, posttraumatic stress disorder, and alcohol dependence in remission. At that time,

mother had “limited insight into [the] reason her children were taken away.”

In April 2017, mother testified positive twice for amphetamine and methamphetamine. She also tested positive for alcohol. Mother enrolled herself in an inpatient drug program. Mother completed the drug program prior to the section 366.26 hearing.

4. Mother’s Visits with the Children

DCFS generally but not always described mother’s visits as positive. In 2012, mother’s visits were monitored. Mother initially visited the children daily but reduced the frequency to two or three times weekly within a few months. In September 2012, DCFS described mother’s visits as “appropriate,” and suggested that the children requested to visit with her. In October 2012, DCFS reported mother visited the children weekly.

In December 2012, DCFS briefly permitted mother to enjoy unmonitored visits. DCFS halted the unmonitored visits when it learned that mother had been hallucinating. For example, mother believed that a pile of clothes was a pile of snakes. Additionally, mother declined some visits to spend time with her friends.

In January 2013, DCFS reported that mother visited consistently. Mother visited in the home of maternal grandparents. Mother read to the children, played with them on the floor, and assisted with putting the children to bed. In March 2013, mother became homeless and stopped visiting the children.

In June 2013, DCFS reported that the children were happy to see mother, and mother’s visit was “good and smooth.”

(Capitalization omitted.) In July 2013, DCFS reported that mother continued to visit consistently and acted appropriately during her visits. In December 2013, DCFS reported that mother visited consistently three times a week. The children were happy during mother's visits.

In February 2014, mother visited three times, and in March, she visited twice. Mother missed two visits without explanation. In April 2014, DCFS reported that mother visited the children every week.

Mother stopped visiting from November 2015 through April 2016.

In October 2016, Sh.E. and Sa.E. stated that they wanted to live with mother. Mother requested custody of the children and indicated that she would support them with her welfare benefits. In December 2016, mother had unmonitored weekly visits, but she did not visit every week. The social worker reported that the visits were "positive" except when mother required the children to babysit her infant son.

In December 2016, Sa.E. again reported that she wanted to live with mother. However, in January 2017, Sa.E. no longer wanted to visit mother. Sa.E. explained that she did not want to babysit her brother and also did not like the cockroaches at her mother's home.

In March 2017, DCFS reported that both girls had a positive visit with mother, and Sh.E. did not want to leave mother. Sh.E. asked why she could not go home with mother. The social worker described mother as caring and attentive.

In June 2017, DCFS reported that mother had consistent weekly monitored visits. Mother would feed the children and play with them. A monitor would redirect mother when mother

focused on her cell phone rather than the children. “The children appear to enjoy being in mother’s company.” Maternal grandmother made an effort to ensure mother was able to visit the children. Mother attended an open house at the children’s school.

Also in June 2017, DCFS reported that Sh.E. wanted to be able to visit mother without a monitor. Sa.E. reported that she felt safe with mother. Maternal grandmother expressed concern that mother may be living with people that could be dangerous for the children. In May 2018, DCFS reported that the maternal grandparents, mother, and the children traveled together.

5. DCFS’s Reports for the Section 366.26 Hearing

In advance of the section 366.26 hearing, in November 2017, DCFS reported that the children had weekly monitored visits with mother. Mother would play with the children and take pictures. A social worker again needed to redirect mother when mother focused on her phone, rather than on the children. The children enjoyed mother’s company. Mother interacted well with the children. In January 2018, DCFS reported that mother continued to visit weekly. Mother would provide a snack or a meal. The children showed affection towards mother. Sh.E. and Sa.E. reported that they wanted to live with mother.

On May 10, 2018, DCFS reported that both Sh.E. and Sa.E. wanted to spend the night with mother, and Sa.E. remarked that she had never spent the night with mother. That same day, the juvenile court permitted mother unmonitored visitation with the children. Mother reported that during her unmonitored visits she would play with “puzzles and make-up, watch television and movies, and play dress-up.” According to mother, she also

provided food for the children and asked them about their school. The children reported that they watched movies, went swimming, and played outside with mother. The children, however complained that mother “ ‘pays more attention to her boyfriend th[a]n us.’ ” Sa.E. told the social worker she would prefer not to visit mother.

6. After a Hearing, the Juvenile Court Terminated Mother’s Parental Rights and Ordered Adoption as Sh.E. and Sa.E.’s Permanent Plan

On September 6, 2018, at the section 366.26 hearing, eight-year-old Sh.E. testified that she loved mother and wanted to live with mother. Sh.E. testified that she would be sad if she could not live with mother.

Mother’s attorney argued that the court should not terminate mother’s parental rights. The children’s attorney advocated in favor of terminating mother’s parental rights. According to her, the children have enjoyed stability in the care of their grandparents.

The juvenile court concluded: “I don’t find mother has met her burden to show that the beneficial relationship exception applies. Although she has shown regular visitation and contact, I don’t believe she’s shown that the relationship promotes the well-being of the children to such a degree as to outweigh the well-being the children would gain in a permanent home with their longtime caregivers.” The court expressed hope that maternal grandparents would continue to allow mother to visit the children.

The juvenile court acknowledged that mother regularly visited the children. Nevertheless the court found “that any benefit accruing to the child from his/her relationship with the

parent(s) is outweighed by the physical and emotional benefit the child will receive through the permanency and stability of adoption, and that adoption is in the best interests of the child.”

DISCUSSION

The purpose of a section 366.26 hearing is to provide a permanent home for dependent children, and the Legislature has identified adoption as the preferred plan. (*Breanna S.*, *supra*, 8 Cal.App.5th at p. 645.) The juvenile court must order adoption unless it identifies an enumerated exception to adoption. (*Ibid.*) In this case, mother argues that the following statutory exception required the juvenile court to select legal guardianship rather than adoption as the children’s permanent plan: “The parents have maintained regular visitation and contact with the child and the child would benefit from the continuing the relationship.” (§ 366.26, subd. (c)(1)(B)(i).) This exception applies “only in an extraordinary case.” (*Breanna S.*, *supra*, 8 Cal.App.5th at p. 646.)

The exception on which mother relies requires her to prove not only regular visitation but also that her relationship with the child “ ‘ ‘ ‘promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents.’ ” ’ ” (*Breanna S.*, *supra*, 8 Cal.App.5th at p. 646.) “A showing the child derives some benefit from the relationship is not a sufficient ground to depart from the statutory preference for adoption.” (*Ibid.*) “No matter how loving and frequent the contact, and notwithstanding the existence of an ‘ “emotional bond” ’ with the child, ‘ “the parents must show that they occupy ‘a parental role’ in the child’s life.” ’ ” (*Ibid.*) “Day-to-day contact is not necessarily required, although it is typical in a parent-child relationship.” (*In re Casey D.* (1999)

70 Cal.App.4th 38, 51.) “[A] child should not be deprived of an adoptive parent when the natural parent has maintained a relationship that may be beneficial to some degree but does not meet the child’s need for a parent. It would make no sense to forgo adoption in order to preserve parental rights in the absence of a real parental relationship.” (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1350.)

Turning to this case, mother had the burden to prove that her relationship with the children promoted the children’s well-being to such a degree as to outweigh the benefit the children would gain from being adopted by their grandparents. (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1165.) The juvenile court found “that any benefit accruing to the child from his/her relationship with the parent(s) is outweighed by the physical and emotional benefit the child will receive through the permanency and stability of adoption, and that adoption is in the best interests of the child.”

On appeal, mother argues that evidence showed she had a “substantial, positive, emotional attachment” to the children. (Capitalization and bold omitted.) Evidence that the children referred to her as mother and, at times, stated that they wanted to live with her supported mother’s argument. The issue however is not whether mother had a bond with the children. Instead, the “question is whether that relationship remained so significant and compelling in [the child’s] life that the benefit of preserving it outweighed the stability and benefits of adoption.” (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 396 (*Anthony B.*)). Mother’s argument does not address this prerequisite, and therefore she demonstrates no error.

Moreover, the record shows that the juvenile court did not abuse its discretion in concluding that the benefit the children would derive in preserving mother's parental rights outweighed the benefit achieved by adoption. (See *Breanna S.*, *supra*, 8 Cal.App.5th at p. 647 [abuse of discretion standard applies to evaluate detriment from termination of parental rights with benefit from permanency of adoption].) Maternal grandparents provided stability and a loving home where the children thrived. Maternal grandparents provided for all of the children's needs and were readily available to assist the children. Maternal grandparents made sure that the children attended their medical and dental appointments.

Although by the end of the proceedings, mother consistently visited, she did not occupy a parental role with the children. "[P]leasant and cordial [parent-child] visits are, by themselves, insufficient to mandate a permanent plan other than adoption." (*In re Brian R.* (1991) 2 Cal.App.4th 904, 924.) Mother did not take responsibility for their education, attending only one open house. She did not take responsibility for their medical care. Instead, her role was more akin to a playmate than a parent. (See *Breanna S.*, *supra*, 8 Cal.App.5th at p. 646 ["No matter how loving and frequent the contact, and notwithstanding the existence of an 'emotional bond' with the child, 'the parents must show that they occupy 'a parental role' in the child's life.' "].) Even after mother's visits became consistent, social workers had to redirect mother when she focused on her phone or on her boyfriend. In short, mother demonstrates no abuse of discretion in terminating her parental rights. (See *Anthony B.*, *supra*, 239 Cal.App.4th at p. 397 [affirming termination of parental rights when prospective adoptive parents provide stable,

suitable, and loving home]; *In re Clifton B.* (2000) 81 Cal.App.4th 415, 424 [affirming termination of parental rights even though father maintained a close relationship with his son and son referred to him as daddy].)

In re Jerome D. (2000) 84 Cal.App.4th 1200 (*Jerome D.*) is factually distinguishable and does not assist mother. In *Jerome D.*, an appellate court reversed the termination of parental rights based on expert testimony that mother and her son shared a “parent-child relationship.” (*Id.* at p. 1207.) There also was expert testimony that if the child’s relationship with his mother were severed, the child “would grieve and could experience emotional and behavioral difficulties, and that continued contact would benefit him developmentally.” (*Ibid.*) This case contained no similar expert evidence that mother occupied a parental relationship or that the children would suffer developmental difficulties if their relationship with mother were severed.

DISPOSITION

The order terminating mother’s parental rights is affirmed.
NOT TO BE PUBLISHED.

BENDIX, J.

We concur:

ROTHSCHILD, P. J.

CHANEY, J.